

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Bell Telephone Company)	
)	ICC Docket No. 02-0864
Filing to increase Unbundled Loop)	
and Nonrecurring Rates)	

**AT&T'S SUPPLEMENTAL BRIEF REGARDING ADDITIONAL
SUBSTANTIVE CHANGES MADE BY SBC ILLINOIS IN ITS REBUTTAL
TESTIMONY**

AT&T Communications of Illinois, Inc. ("AT&T") hereby files its Supplemental Brief regarding additional substantive changes made by SBC Illinois in the "rebuttal" testimony it circulated in this matter on January 20, 2004.

On Friday, January 23, 2004, the Intervening CLECs, including AT&T, filed a "Reply Brief on Issues on Reopening of Intervening Competitive Local Exchange Carriers." In that Reply Brief, the Intervening CLECs pointed out several instances in which SBC's "rebuttal" testimony incorporated numerous substantive revisions, alleged "updates" and changes to SBC's original filing, reflecting new data and new developments subsequent to the time of the original filing in December 2002. See Reply Brief of Intervening CLECs, pp. 3-4. SBC made these changes, of course, despite the fact that it represented to the Commission at the December 19, 2003 status conference in this proceeding that "SBC is going to proceed with the case and the tariffs as they existed on May 9 [2003] when this docket was abated." Tr. at 211.

In its Reply Brief, one of the changes the Intervening CLECs raised was the fact, as SBC witness Dr. Currie admitted, that SBC has updated the labor rates it used in all of its fifteen nonrecurring cost studies. Reply Brief of Intervening CLECs, p. 3.

Because SBC had just circulated its “rebuttal testimony” late on January 20, 2004, continued to send revised, updated and inadvertently omitted schedules, and failed to provide the new, revised cost studies upon which its “rebuttal” testimony was based until the day the Reply Briefs were due, the Intervening CLECs did not have adequate time to review what SBC had filed to provide a complete list of changes. In fact, at footnote 4, the Intervening CLECs pointed out that the list they provided were only a “few examples ... based on the limited review we have been able to make of SBC’s “rebuttal” case since it was received on the evening of January 20.”

Since the Intervening CLECs filed their Reply Brief on January 23, 2004, AT&T’s witnesses have had additional time to review what SBC circulated in “rebuttal” on January 20. While it is true that, as SBC witness Dr. Currie admits, all of SBC’s nonrecurring cost studies have been revised to reflect allegedly “updated” labor rates, that is not the only –or, for that matter, the most significant substantive change made by SBC to its nonrecurring cost studies.

Specifically, when it filed its original nonrecurring cost studies and supporting testimony, SBC assumed that, with the exception of the standalone UNE loops comprising the Enhanced Extended Link (or “EEL”) combination, all of the standalone UNE loops used to provide POTS service would be non-designed UNE loops; that is, these loops would not be required to undergo SBC’s “design” process, which is a process that subjects the loop – which is presumably being used for a “Special Service” application – to rigorous testing. Not surprisingly, the nonrecurring charge for a loop that is subject to the design process is significantly higher than one that is not.

In its direct case, AT&T agreed that none of the stand alone UNE loops should be designed loops and, in fact, challenged SBC's assumption that UNE loops used as part of an EEL combination must undergo the design process.

AT&T was quite surprised, then, to discover just this week that SBC's new, revised nonrecurring cost studies are no longer based on the fundamental premise that stand alone UNE loops need not undergo the "design" process. Rather, SBC's new, revised nonrecurring cost studies are now based on the assumption that *all* stand alone UNE loops are required to undergo the rigorous testing and the other facets of SBC's design process. Put simply, the UNE loops that were non-designed loops in SBC's original filing are now, after SBC's "rebuttal" filing, designed loops. Not surprisingly, this significantly increases SBC's proposed loop nonrecurring charges.

This is just one example of the numerous changes SBC made to its loop nonrecurring studies and corresponding loop nonrecurring charges in its "rebuttal" case. SBC has made extensive changes to its nonrecurring cost studies that affect the labor times, involved work groups, probabilities of task occurrences, and even the fundamental structure of cost elements, all of which affect the development of loop nonrecurring charges. These are all fundamental changes in the way SBC performs its nonrecurring cost studies and cannot, under any interpretation, be reasonably characterized as rebuttal testimony. Rather, this represents what is tantamount to a new direct case by SBC on nonrecurring charges. As a practical matter, then, AT&T (and, presumably, the other CLECs and Staff) have been relegated to "square one" in terms of discovery and investigation to determine why SBC made these changes and whether, under any

circumstances, SBC's stand alone UNE loops need undergo this "design" process.

AT&T certainly is unable to think of one.

Lest the Commission believe that nonrecurring charges for unbundled loops are the only areas that SBC has filed fundamentally new inputs (other than labor rates), SBC has made substantive changes to the Unbundled Port Features cost study by nearly doubling the fallout percentage for the Recent Change Memory Administration Center, or RCMAC. This one change effectively doubles the cost of basic port features. SBC has also changed several other task times and probabilities in the majority of its nonrecurring cost studies, all of which require new discovery and investigation akin to that required to prepare direct testimony rather than rebuttal testimony.¹ *See, e.g.,* Barch Rebuttal, p. 77, items 9 and 10 regarding changes to the Combination Ports NRC study, and fn. 110, which details some of the specific changes to the cost study; Barch Rebuttal, pp. 77-78, which contains a discussion of the change to the RCMAC fallout percentage in the Combination ULS Ports NRC and the Unbundled Port Features NRC cost studies; Currie Rebuttal, pp. 20-23, containing a discussion of numerous changes to task times and probabilities in the Unbundled Loops NRC and Special Access to UNE Conversion NRC cost studies; and Gomez-McKeon Rebuttal, pp. 35-37, discussing the change to the Special Access to UNE (SA2UNE) Cost study to remove the retagging activity.

¹ Apparently, SBC has gone through many of its cost studies and, in some instances, has revised the probabilities of occurrence to reflect more updated data. This explanation is set forth in the Rebuttal Testimony of David J. Barch on behalf of SBC at pp. 77-78. There are numerous other instances, however, where the probabilities of occurrence have not been updated, leaving CLECs and this Commission in the unfortunate circumstance of not knowing why certain probabilities were updated to reflect allegedly more currently data, while SBC apparently felt that other probabilities of occurrence did not need to be updated. Of course, this ignores the fact that in a TELRIC context, SBC is supposed to be identifying efficient, forward-looking probabilities rather than simply updating its TELRIC studies to incorporate actual data.

In summary, the nonrecurring cost studies SBC circulated on January 23, 2004 are new nonrecurring cost studies and AT&T cannot respond to them in the time given to respond to SBC's "rebuttal" testimony on nonrecurring costs – because it is not really rebuttal testimony at all. It is new nonrecurring cost testimony based on new nonrecurring cost studies. Contrary to SBC's representations and stated intentions, SBC is not "proceed[ing] with the case and the tariffs as they existed on May 9 when this docket was abated." Tr. 211. Rather, SBC has filed new nonrecurring cost studies and is *not* relying on SBC's case as it existed on May 9, 2003. One of the fundamental problems this presents, of course, is that while CLECs and Staff may be able to discover in the one month provided for their rebuttal all of the changes SBC HAS made, they cannot identify all of the other changes that SBC SHOULD HAVE made to accomplish a comprehensive, balanced update.

As is clear from the reply briefs filed by the parties, neither SBC nor the CLECs regard this proceeding as a tariff proceeding, and SBC disclaims any characterization of this proceeding as voluntary. Further, all parties agree that the *AT&T v. Illinois Bell* opinion does not compel completion of this case by any specific date (June 16 or otherwise). Yet at this point the Commission is proceeding with this case as though it were a tariff investigation subject to a remaining six-month suspension – an approach that at this point has allowed SBC to significantly update its original case, while placing the CLECs – whose business futures will be severely impacted by the outcome of this case – at a severe disadvantage.

WHEREFORE, AT&T Communications of Illinois, Inc. respectfully requests that, for the foregoing reasons and the reasons stated in the Initial and Reply Briefs of the Intervening CLECs, that the Commission grant the relief requested in those Briefs.

Dated: January 29, 2004

Respectfully submitted,

AT&T COMMUNICATIONS OF ILLINOIS, INC.

A handwritten signature in black ink that reads "Cheryl Urbanski Hamill". The signature is written in a cursive, flowing style.

By: _____
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